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## Analysis

# The Rise and Fall of Access to Justice in The Netherlands

Hanna Tolsma,\* Kars de Graaf and Jan Jans

### Abstract

This article analyses the development of access to justice for environmental organisations in Dutch law. It consists of two parts. The first part focuses on the rise of environmental organisations' right of access to the courts, and considers case law and legislation relating to the General Administrative Law Act and environmental permitting. It also discusses possibilities for environmental organisations to bring proceedings before the civil courts. The second part addresses the dismantling of the right of access to the courts. Recent developments in the legislation and case law are discussed as well as possible future changes in this respect. The article concludes with some final remarks concerning the present situation in the Netherlands in relation to the Aarhus Convention.

Keywords: access to justice, standing, interested party, aarhus convention, enforcement, compliance

## 1. Introduction

With the adoption of the Aarhus Convention and the European legislation implementing it, the rights of environmental organisations have been firmly anchored in international and European law.<sup>1</sup> The question arises to what

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1 UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), done at Aarhus on 25 June 1998. The Netherlands ratified the Convention on 30 September 2004, *Stb. 2004*, nr. 518.

extent this development at the international level has consequences for the national legal systems. In the Netherlands, but also in Germany, environmental organisations' access to the legal system is a topic that is much discussed. In Germany, for example, it has been argued since the Convention was adopted that the role of interest groups, and particularly environmental groups, should be increased. Conversely, the tendency in the Netherlands seems to be the very opposite. Initially, from the 1970s, the Dutch system of civil and administrative law afforded environmental organisations ample opportunity to bring actions before the courts. A study commissioned by the European Commission on access to justice in environmental matters in eight European countries showed, for example, that in the period 1996–2001 environmental organisations in the Netherlands brought by far the most cases.<sup>2</sup> However, even though the Aarhus Convention aims to guarantee broad access to justice in environmental matters, it has latterly been argued in the Dutch Parliament that environmental organisations' access to the courts should be curtailed. In 2007, a motion by a member of the Lower House, Mark Rutte, aiming to deprive 'professional complainants', who he claimed were obstructing necessary measures by 'abusing' their rights and thus delaying economic development, of access to the courts was rejected only narrowly.<sup>3</sup> In December 2007, a majority in the Lower House did in fact support a motion requesting the Government to introduce a requirement limiting standing to those whose interest is protected by the legal rule in question in the General Administrative Law Act (*Algemene wet bestuursrecht*, GALA).<sup>4</sup> And even more recently the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak*), the highest administrative court in the Netherlands, has seemed to come down on the side of the restrictionists. 'Council of State shows professional complainants short shrift' and 'Council of State consigns environment to back seat in solo action' were among the headlines in late 2008.<sup>5</sup>

This article analyses the development of access to justice for environmental organisations in Dutch law. It consists of two parts. The first part (Section 2) focuses on the rise of environmental organisations' right of access to the courts, and considers case law and legislation relating to the GALA and environmental permitting. It also discusses possibilities for environmental organisations to bring proceedings before the civil courts. The second part (Section 3) addresses the dismantling of the right of access to the courts.

2 N De Sadeleer, G Roller and M Dross, *Access to Justice in Environmental Matters and the Role of NGOs. Empirical Findings and Legal Appraisal* (the Avosetta Series (6)) (Europa Law Publishing, Groningen 2005).

3 Lower House II 2007/08, 31 200, nr 19.

4 Lower House 2007/08, 31 200 XII, nr 70.

5 Adri Vermaat, 'Raad van State rekent af met beroepsklagers', *Trouw* 2 October 2008; Wim Struijlaart and Ron Ritzen, 'Raad van State zet op eigen houtje milieu op zijspoor', *Trouw* 14 October 2008.

Recent developments in the legislation and case law are discussed as well as possible future changes in this respect. The article concludes with some final remarks concerning the present situation in the Netherlands in relation to the Aarhus Convention (Section 4).

## **2. The rise of a right of access to the courts for environmental organisations**

Until the mid 1970s the administrative courts had largely kept environmental organisations out of the courts. It was virtually impossible for these organisations to bring an action against a permit granted by a public authority to carry out a particular activity and the same applied to direct legal action against polluters before the civil courts. This meant that cases brought by environmental organisations against the initiators of polluting activities were not given a substantive hearing. Environmental organisations were effectively denied access to justice. This state of affairs led to much criticism in academic and political circles.<sup>6</sup> However, the case law and legislation that will be described below changed environmental organisations' right of access to the courts in such a way that it became an important feature of Dutch law, and set an example for various other countries. Administrative courts accepted environmental organisations' right to access the courts; this was reflected in the case law and ultimately codified in the GALA. In the particular area addressed in this article, environmental permitting, the legislature even went so far as to introduce a separate regime: the *actio popularis*. As a result any person could, in principle, bring an action against a decision of the administration. A fundamental change was evident, not only in the administrative courts, but also in the civil courts as regards the right of environmental organisations to access the courts.

### **2.1 Environmental organisations' right of access to the civil courts**

The decision of the Netherlands Supreme Court (*Hoge Raad*) of 17 June 1986 in the *Nieuwe Meer* case was a groundbreaking decision on the right of environmental organisations to bring an action in the civil courts. In this case, the Supreme Court ruled on the question whether it was legally possible for an organisation to bring a civil action to protect a public interest.<sup>7</sup> For the first time it held a claim by environmental organisations admissible in a civil action against a polluter. Previous actions before a civil court, such as those

6 Van Male 1992, 55.

7 HR 17 June 1986, NJ 1987, 743 (with note by Heemskerk), AB 1987, 173 (with note by Van den Burg), AA 1986, 638 (with note by Nieuwenhuis).

brought by the association for the conservation of the Waddenzee against offshore drilling trials, had been held inadmissible because the interests the association aimed to protect were not specific interests of the claimants but public interests affecting everyone, which were ostensibly protected by the administration.<sup>8</sup> The *Nieuwe Meer* case involved an action for an injunction to make the municipality of Amsterdam discontinue dumping sludge from the Amsterdam canals in the Nieuwe Meer (a nearby artificial lake) until the requisite permits had been granted. From the judgment it emerged that an action by an environmental organisation would be admissible if it fulfilled a number of requirements.<sup>9</sup> The organisation would have to be a legal person; its stated object would have to include protection of the public interest on which the action was based; and the action would itself have to aim to protect such an interest. The Supreme Court regarded this as constituting an exception to the rule:

In the first place, the interests involved in an action such as the present one – essentially aiming to obtain a ban on further harming the environment – lend themselves to ‘pooling’ such as has been achieved by the environmental associations’ legal action; by contrast, if this were not possible, efficient legal protection against a threatened impairment of these interests – which as a rule affect large groups of citizens collectively, while the consequences of such impairment as regards each of these citizens are often hard to predict – might be made considerably more difficult.

The Supreme Court felt it important that environmental organisations should have been able to participate in a permitting procedure and have had opportunities to appeal the decision. It also felt that an environmental organisation entitled to exercise these rights in a permitting procedure should also be able to bring an action for an interim injunction against acts which it felt were wrongfully being carried out without a permit and which could in principle result in impairment of the interests the association aimed to protect. From the later judgments in *Kuunders* and *Covra* it is clear that the right to efficient legal protection is crucial when determining standing.<sup>10</sup> Thus, the requirement that an organisation must undertake actual activities in

8 Pres Rb Rotterdam 21 July 1972; Hof Den Haag 25 May 1973, NJ 1974, 35.

9 Cf MA Heldeweg, RJN Schlössels and RJGH Seerden, *De kwadratuur van de algemeen belangactie? Over de legitimiteit van algemeen belangacties in democratisch-rechtsstatelijk en rechtsvergelijkend perspectief*, *RM Themis* 2000/2, 46; MA Robesin, ‘Procedeerlust opwekkend en remmend privaatrecht’ in RJJ van Acht and GC Sicking (eds), *Privaatrecht en Milieurecht* (W.E.J. Tjeenk Willink, Zwolle 1994) 58–9.

10 HR 17 January 1997, NJ 1998, 656, with note by ARB (*Covra*); HR 18 December 1992, NJ 1994, 139, with note by CJHB (*Kuunders*).

furtherance of the aim it seeks to promote does not apply when it is defending interests which do not really lend themselves to protection by individual legal action but could appropriately be pooled. In 1994, a provision was included in section 3:305a of the Netherlands Civil Code effectively codifying the case law. The first paragraph provides that if a foundation or association with full legal capacity protects interests pursuant to its articles, it can bring an action to protect similar interests of other persons.

## ***2.2 The concept of 'interested party' in Dutch administrative law***

The right of environmental organisations to appeal against administrative decisions to the courts has been incorporated in Dutch law since 1994, in subsections 1 and 3 of section 1:2 GALA. This codified the case law that had been developed by the administrative courts since the 1970s. The first subsection defines 'interested party' as 'a person whose interest is directly affected by a decision'. According to the case law, the interest affected must be the person's own, personal, objectively determinable, current and directly affected interest. Under subsection 1 it is not possible for natural persons to act to protect public interests, such as protection of the environment, nature conservation or the preservation of historic buildings. These are public interests which go beyond the interests of any individual. An individual seeking to protect such a public interest will therefore never be able to satisfy the requirement that the interest is his own, personal and objectively determinable. Subsection 3 creates additional possibilities for legal persons to act as an interested party. This is achieved by deeming public interests (for example the environment) and collective interests (for example of local residents) which legal persons in particular protect pursuant to their objects and as evidenced by actual activities, to be their own, personal and objectively determinable interests. These conditions, under which an environmental organisation may be allowed access to the courts, are cumulative; in other words, a legal person seeking 'in particular' to protect a public interest must do this not only pursuant to its objects but also as evidenced by actual activities.

That an environmental organisation should in particular seek to protect a public interest must follow from its objects as defined in its articles. If its objects are defined too widely or too narrowly, any claim it brings will not be considered admissible by an administrative court and it will have no access to judicial protection before the administrative courts. It is because of this requirement that, for example, political parties do not have a right to access the courts in such matters. An environmental organisation that has defined its objects in a way that is tantamount to 'protecting the public interest' will be denied access to the courts. However, the case law on this point is not always entirely clear. Both organisations with very specific objects and those

with very wide objects have on occasion been allowed access.<sup>11</sup> In addition to having appropriate objects, it must be evidenced by the actual activities of the organisation that it particularly seeks to protect a public interest. From the explanatory memorandum on the legislation it follows that this requirement means that interest groups must actually be active in promoting the object for which they were established.<sup>12</sup> For this reason, interest groups that exist only on paper will not be regarded as an interested party in this sense.

Given that anybody can set up a legal person and write the objects himself, it will be clear from the above that anybody is also free to set up a public interest group and be active for it. Such a group is entitled, as an interested party, to bring an action against decisions directly affecting the public interest in question. In a sense, therefore, subsection 3 creates an *actio popularis*, granting everyone access to judicial protection by the administrative courts.<sup>13</sup>

### 2.3 A separate regime for environmental permitting

Notwithstanding the restrictions implied by the interested party concept as defined in the GALA, the legislature had occasionally passed special legislation which explicitly granted wider access to the courts. Such explicit departures from the interested party regime were to be found in spatial planning and environmental legislation, in particular in relation to municipal planning and environmental permitting procedures. In the past, the legislature had opted for a phased *actio popularis*. This meant that everyone was entitled to express a view on a draft decision during the preparatory phase of decision making. In addition, for a long time anyone who expressed a view during the preparatory phase was subsequently entitled to bring an action before the administrative courts against the ultimate decision. The principal argument in favour of this wide right of access to the courts in the field of environmental permitting is that planning procedures and environmental permitting procedures involve supra-individual interests. If there is no possibility of anyone acting to protect such public interests, there is a real risk that they will be largely ignored during the decision-making process. A right of access to the courts that is open to everybody can, in other words, contribute to the quality of decision-making.<sup>14</sup> Indeed, this is the reason the position of environmental organisations was strengthened at the international level.<sup>15</sup>

11 RJN Schlössels, *De belanghebbende* (Kluwer, Deventer 2004), 122.

12 PG Awb I, 149.

13 PJJ van Buuren, 'Zin en onzin over de *actio popularis*', in BPM van Ravels and MA Voorst (eds), *Natuurlijk van belang* (Kluwer, Deventer 2003), 161.

14 Schlössels (n 11) 12.

15 F de Lange, 'Er is meer tussen EVRM en Awb', *TO* 2004, 211.



## 2.4 Conclusion

In the Netherlands, environmental organisations can bring an action on twin tracks, in other words before the civil courts and the administrative courts.<sup>16</sup> There is however some degree of coordination between the civil track and the administrative track to ensure that work is divided efficiently between the two and to avoid conflicting judgments. It follows, for example, from the *Covra* judgment that an environmental organisation that has brought an unsuccessful action in the administrative courts cannot then raise the same questions again in civil proceedings.<sup>17</sup> The decision to grant the contested permit has acquired formal force of law and can no longer be challenged. All that remains for the civil courts is to determine whether more stringent requirements may be imposed on a permit holder than required by the permit. According to the Supreme Court a further civil action will succeed only in exceptional circumstances.

## 3. The potential fall of environmental organisations' right of access to the courts

The right of environmental organisations in the Netherlands to access the courts has been under fire for some years now. Actions by environmental organisations are regarded as an obstacle to industry. The idea that court actions last an unacceptably long time because of the wide circle of people entitled to bring actions has also become accepted wisdom in the political arena. The decline of environmental organisations' right of access to the courts began with the legislature's abolition of the *actio popularis*. More recently the courts have toughened the requirements for a claim to be admissible under subsection 3 of section 1:2 GALA. And if a measure, under serious consideration, is introduced limiting standing to those whose interest is protected by the legal rule in question, environmental organisations' right of access to the courts will be curtailed even further.

### 3.1 The *actio popularis* in environmental permitting under fire

The *actio popularis* was abolished in respect of environmental permitting on 1 July 2005. Currently, unlike the situation previously, access to the courts in respect of municipal planning procedures and an important category of environmental permits is no longer open to everybody. The legislature has opted to bring the regime applying to environmental permitting into line

<sup>16</sup> See Heldeweg and others (n 9).

<sup>17</sup> HR 17 January 1997, NJ 1998, 656, with note by ARB (*Covra*).



with the interested party regime in section 1:2 GALA. According to the Government, the change in the law sends an important signal that serious efforts are being made to reduce 'unnecessary' litigation.<sup>18</sup> It was not however expected that the change would bring about a significant reduction in the number of actions brought by environmental organisations, as earlier research had already indicated that environmental organisations could in practice often be deemed to be interested parties within the meaning of subsection 3.<sup>19</sup> Given that, since the law changed, the administrative courts have to determine the extent to which a person can be regarded as an interested party, it is likely that more case law will be forthcoming on the question whether environmental organisations can be regarded as an interested party.

On the one hand, it is true that participation is still open to anybody in respect of a number of important environmental permitting decisions, such as whether or not to grant an environmental permit and the adoption of municipal zoning plans. On the other hand, however, there are a number of recent legislative proposals in which the Lower House has explicitly provided that participation is open only to interested parties. Consider, for example, the proposed new law on environmental licensing, which will integrate the 25 existing licensing systems in a new single environmental licence, or the new drinking water legislation, which will integrate six licensing systems in a single water licence. During the legislative process it has become increasingly clear that the Dutch Parliament is opposed to an *actio popularis*, even in the preparatory phase of decision making. Both proposed laws were initially introduced to Parliament containing elements of an *actio popularis* as regards the preparatory phase of the licences concerned, but in both cases the Lower House explicitly rejected these elements by limiting the possibility of expressing views to interested parties.<sup>20</sup>

Fundamental grounds have been put forward for abolishing the *actio popularis*.<sup>21</sup> The most important is that such an action cuts an odd figure in the Dutch system of legal protection. In the Netherlands, administrative law focuses primarily on protecting individual rights (*recours subjectif*). In a system based on the protection of individual rights, it is argued that it is inappropriate for environmental organisations to be able to enforce the law by contesting the legality of administrative decisions (*recours objectif*). Although it is regarded as wholly appropriate that these organisations should be able to participate in the preparatory phase of decision making, beyond this phase

18 Lower House 2003/04, 29 421, nr 3, p 4.

19 AAJ de Gier, J Robbe and ChW Backes, *De actio popularis in het ruimtelijke ordenings- en milieurecht*, Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, June 1999.

20 Lower House 2007/08, 30 844, nr 16 and 30 818, nr 17.

21 Among others: N Verheij, 'Weg met de actio popularis!', *TO* 2004, 146; JMHF Teunissen, 'De algemeen belangorganisaties als bestuursrechtelijk (pseudo-) Openbaar Ministerie?', *Gst.* 2003, 7179, 64–5.

access to justice should be open only to those whose individual rights are affected. A further argument is the lack of democratic legitimization of environmental organisations seeking to pursue a public interest before the courts. Protection of the public interest, it is argued, is an exclusive task of the administration. It is the administration that ultimately makes a decision based on the legislation. There is no objection to environmental organisations participating in the decision-making process before the final decision is taken, but once a decision has been made it is felt inappropriate that they should protect the public interest before the courts.

### 3.2 *The general right of access to the courts for public interest groups under fire*

The arguments put forward to support abolition of the *actio popularis* are also used to oppose environmental organisations' right of access to the courts under subsection 3 of section 1:2 GALA. There are even those who argue that this right should be done away with altogether.<sup>22</sup> This was the view taken by the Lower House when it adopted a motion expressing the wish that the Government should examine a change in the law to this effect.<sup>23</sup> Subsection 3 has remained unaltered since 1994. It does however seem that this desire to limit environmental organisations' right of access to the courts has recently induced the highest administrative court to change tack as regards the interpretation of subsection 3. Given the desirability expressed both in the political arena and in legal discourse of introducing a requirement restricting standing before the administrative courts to those directly affected, the Supreme Court seems to be accommodating this wish.

#### 3.2.1 Limiting access to the courts: interpretation of subsection 3

On 1 October 2008, the Judicial Jurisdiction Division of the Council of State ruled on the admissibility of a claim by *Stichting Openbare Ruimte*, an association dedicated to promoting a healthy and sustainable environment and good spatial planning.<sup>24</sup> The association was appealing a decision of the provincial executive of Limburg granting a permit to a poultry farm under section 16 of the Nature Conservation Act (*Natuurbeschermingswet*) 1998. The court held that the association could not be regarded as an interested party for two reasons. In the first place, the stated objects were so widely formulated that

<sup>22</sup> Verheij (n 21); Teunissen (n 21).

<sup>23</sup> See *Handelingen II* 2002/03, 34-2445, 34-2446.

<sup>24</sup> ABRvS 1 October 2008, AB 2008/348, with note by Michiels; JB 2008/239; with note by Schlössels.

there could be no question of a public interest that was in particular protected by the association. According to article 2 of its articles, the association's object was to achieve 'a qualitatively sustainable living environment for all living beings, including both the local, national and global living environment'. This comprehensive object is indeed not very specific. It is, however, interesting to note that the court did not then simply conclude that the association was not an interested party, as it has in the past, but went on to consider its actual activities.<sup>25</sup> In our view it is debatable whether an interpretation allowing the degree to which an association can be regarded as an interested party—despite its having too widely formulated objects—to be determined with regard to its actual activities is consistent with the text of subsection 3 of section 1:2 GALA. After all, it is clear from the legislation that the requirements must be regarded as cumulative.

The heart of the new line in the case law is however formed by the court's restrictive interpretation of the concept of actual activities. The association concerns itself primarily with submitting enforcement applications, expressing views on decisions and bringing actions before the courts. According to the court, these are not actual activities from which it emerges that the association is in particular protecting a public interest. The court observed 'that merely bringing legal proceedings against decisions cannot as a rule be regarded as actual activities within the meaning of subsection 3.' In our view, the court adopts a remarkably sweeping view of 'merely bringing legal proceedings'. Expressing views against draft decisions in the preparatory phase, collecting information in preparation of proceedings, and supplying information to third parties about proceedings are all regarded as being inextricably connected with bringing legal proceedings against decisions.

The arguments the court deploys deserve special consideration. That merely bringing legal proceedings cannot be regarded as actual activities is necessary, according to the court, because any other interpretation would amount to allowing anyone to bring legal proceedings. This is hardly a very convincing argument. From the legislative history of the abolition of the *actio popularis*, it is absolutely clear that the legislature intended to maintain the prevailing interpretation of the concept of interested party. Moreover, actual activities is not the only condition that must be fulfilled: there are also the criteria of legal personality and appropriate objects. It is also odd that the court seems to following the line set out in the *Nieuwe Meer* judgment when it adds that the association does not create a pooling of individual interests directly affected by the contested decision, which might serve effective legal protection.

25 This would mean that an environmental organisation whose objects were too wide could nevertheless be regarded as an interested party if its actual activities were deemed sufficient. This could indeed have implied a relaxing of the interested party regime.

However, the very point of the *Nieuwe Meer* judgment was that it sought to ensure environmental organisations would be able to pursue adequate legal protection, whereas the court in this case uses the same argument to reverse the position. In our view, by taking this line, the court is restricting environmental organisations' access to the courts without an express mandate from the legislature and without supplying good arguments.

### 3.2.2 Limiting access to the courts: introduction of standing requirement

Access to the administrative courts in the Netherlands is regulated in such a way that once a person has been deemed an interested party under the GALA, that person then has access to the courts and in judicial proceedings against a decision can and may put forward any argument that will lead to the decision being quashed, regardless of whether there is any relationship between the claimant's interest and the argument put forward or the reason for quashing the decision. Thus an action instituted by an environmental organisation may result in a decision being quashed even if the rule infringed is one that is not designed to protect the interest the environmental organisation is seeking to protect. Given this situation, which some regard as absurd, and the basic premise in the Netherlands that the law serves to protect individual interests, it has been advocated that a *Schutznorm* should be introduced, a requirement limiting standing to those whose interest is protected by the legal rule in question. Such a requirement would mean that an administrative court could only quash a decision if the administrative authority had infringed a rule that aimed to protect the claimant's interest. In 2007, the Lower House adopted a motion in which the Government was requested to introduce such a requirement in certain planning legislation and the GALA.<sup>26</sup> One argument for introducing such a requirement is that it would be in line with the development that the law is increasingly regarded as existing to protect individual rights.<sup>27</sup> It is debatable whether the introduction of such a requirement would have much effect in practice. Empirical research has shown that courts are rarely asked to decide on arguments against a decision which do not have any connection at all with the interest the party arguing them is seeking to protect.<sup>28</sup>

<sup>26</sup> Lower House 29 385, nr 12.

<sup>27</sup> BJ Schueler, Hoe ver strekt de rechtsbescherming in het omgevingsrecht? Over subjectivering in het bestuursprocesrecht, *TO* 2005, 114–23; VAR-Commissie Rechtsbescherming, *De toekomst van de rechtsbescherming tegen de overheid. Van toetsing naar geschilbeslechting* (BJu, Den Haag 2004).

<sup>28</sup> JCA de Poorter, BWN de Waard, AT, Marseille and MJ Zomer, *Herijking van het belanghebbendenbegrip. Een relativiteitsvereiste in het Awb-procesrecht?* (BJu, Den Haag 2004). See note 27.

#### 4. The situation in the Netherlands as regards the Aarhus Convention

As regards environmental organisations' access to justice, until just a few years ago the Netherlands could be regarded as a shining example to other Member States. However, recent developments in the legislature and case law have resulted in the restriction of environmental organisations' access to the courts. In the light of the Aarhus Convention, how should this development be judged? It is clear from the formation of the Convention that there is a great deal of support at the international level for granting environmental organisations access to courts. In our view the increasing emphasis on protection of individual rights in Dutch administrative law is, if nothing else, contrary to the spirit of the Convention.

There are those who say that the Convention opposes the abolition of the phased *actio popularis*. Article 9, paragraph 2, of the Convention, taken together with Article 6, can be read in such a way that participation in decision making should also ensure access to the courts.<sup>29</sup> On the other hand, there are those who doubt whether Article 9 should be interpreted so freely.<sup>30</sup> This interpretation is at the heart of a pending reference to the ECJ for a preliminary ruling.<sup>31</sup> The outcome of this case may be crucial to the further discussion on the development of access to the courts in the Netherlands. In addition there is also debate as to whether the Aarhus Convention opposes introduction of a standing requirement as referred to above. There are authors who take the view that introduction of such a requirement would seriously prejudice the right of environmental organisations to challenge the legality of decisions (Article 9, paragraph 2, of the Convention) and to challenge acts and omissions contravening provisions of the law relating to the environment (Article 9, paragraph 3).<sup>32</sup> Others see no conflict at all between the introduction of such a requirement and the requirements of the Convention.<sup>33</sup> There is, however, agreement in the literature that abolition of access to the courts under subsection 3 of section 1:2 GALA will conflict with the Convention. According to proponents of abolition of environmental organisations' right of access to the courts, the Netherlands must for this reason engage in international debate on the desirability of

29 de Lange (n 15) 212–13.

30 Schueler (n 27) 112.

31 See Case C-24/09.

32 de Lange (n 15) 216; RJGM Widdershoven, *Rechtsbescherming in het milieurecht in Europees perspectief*, *M&R* 2004, 540.

33 N Verheij, 'Uit zuinigheid naar relativiteit. Naar een Schutznormvereiste in het bestuursrecht' in AW Heringa e.a. (eds), *Het bestuursrecht beschermd* (Stroink-bundel) (Sdu, Den Haag 2006), 109; Schueler (n 27) 121.

public interest actions.<sup>34</sup> In the meantime the Judicial Jurisdiction Division seems, with its change of course, to be seeking to come back into line with the current political climate. It is our belief that this is, to put it mildly, unlikely to serve protection of environmental interests in the Netherlands.

34 Verheij (n 21) 146.